



Employment Law Guide for Employers

Redundancy



PENINSULA



Redundancy

This employment law guide explores the basics of redundancy and offers guidance on how to avoid common pitfalls.

Redundancy is a potentially fair reason for dismissal. For the purposes of unfair dismissal and redundancy payments, an employee becomes redundant in their current position if the position is no longer needed because:

- The business in which the employee works ceases to operate;
- The place of business where the employee works ceases to operate;
- The business needs fewer people to carry out work of a particular kind.

Although redundancy may be inevitable in some circumstances, it is still open for an employment tribunal to find that that an employee was unfairly dismissed by reason of redundancy. Therefore it is vital that a fair procedure is followed when making employees redundant.

Consultation process

Fewer than 20 people to be made redundant

The employer must carry out a period of consultation with the employees. This is to allow transparent meaningful communication between employer and employee to keep them up to date and allows the employee to suggest any alternatives to redundancy. There is no minimum period of consultation when the number of employees to be made redundant is fewer than 20.

20 or more people to be made redundant

Where it is proposed to make 20 or more redundancies in a period of 90 days, collective consultation obligations are triggered. Consultation in this circumstance requires consultation with either representatives of recognised trade unions or employee representatives.

The employer must disclose information in writing to the representatives which includes

- Reasons for the proposals;
- Number and descriptions of employees potentially redundant;
- Total number of employees affected
- The proposed methods of selection;
- The procedure to be followed;
- The method of calculating redundancy pay.

The consultation must start in “good time”, and at least 30 days before the first notice of dismissal is given if between 20 and 99 proposed redundancies

are to be made. Where there are 100 or more proposed redundancies, at least 45 days consultation must occur.

Fair procedure

Who will be chosen to be made redundant?

Selection Pool

If the redundancy is 'single post' i.e. one single position is to be made redundant and that position is held by one person; or if all the positions within a department are to be made redundant then a selection pool is not likely to be required. However, if there is to be a reduction of employees performing one role e.g. seven telephonists need reducing to five, then a pool of employees should be identified and from this the potentially redundant are chosen.

This pool will be drawn up by the employer and should be based on the type of work carried out by the employees. The selection of the pool may not be straightforward and may need to contain employees who perform other similar roles to that being made redundant. Remember it is the role that is made redundant – not the person.

Selection criteria

Choosing which employees are to be made redundant must be fair and non-discriminatory. Employers should use objective criteria such as productivity, skills, attendance and disciplinary records. Subjective criteria such as 'attitude' or 'enthusiasm' should be avoided. Length of service can be used in addition to other criteria but should not be the only factor. If the chosen criteria relates to any of the protected characteristics, e.g. age, disability, sex, religion etc then the dismissal will be automatically unfair.

Offer of alternative employment

Before proceeding with redundancy an employer is obliged to consider whether there is any suitable alternative employment and, if so, to offer this to the employee. If the employer fails to offer a suitable

alternative to the employee then they may be considered to have been unfairly dismissed.

Deciding whether there is a suitable alternative will involve looking at certain things including the sort of job, the rate of pay, the hours, the location and the employee's skills, abilities and personal circumstances. If an employee accepts the alternative offer then they are entitled to a four week trial period. If the employee refuses a suitable alternative role then they may lose their entitlement to redundancy pay. Employees on maternity leave must be given first refusal of an alternative role.

Time off during notice period to look for work or arrange training

Employees who are on notice of redundancy are entitled to take a reasonable amount of time off work in order to look for other work or arrange training. The maximum amount of paid time off is that equal to 40% of the employee's working week to be taken during the entire notice period e.g. a 5 day week worker with a 4 week notice period is entitled to paid absence of a maximum of 2 days throughout the 4 week notice period.

Redundancy pay

If an employee has at least two years' continuous service, he/she is entitled to receive statutory redundancy pay. This is calculated at:

- Half a week's pay for each full year worked under the age of 22;
- One week's pay for each full year worked between the ages of 21 and 41;
- One and a half week's pay for each full year worked over the age of 41.

A week's pay is subject to a maximum cap which is reviewed annually – currently this is £525. The total amount that an employee could receive is currently £15,750.